

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACK HAMM,

Plaintiff,

v.

MARTIN O'MALLEY,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 2:21-cv-00645-JDP

**ORDER**

GRANTING PLAINTIFF'S COUNSEL  
ATTORNEY FEES UNDER 42 U.S.C.  
§ 406(b)

ECF No. 26

Plaintiff's counsel seeks an award of attorney fees under 42 U.S.C. § 406(b).<sup>1</sup> ECF No. 26. Plaintiff entered into a contingent fee agreement that provided that he would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 26-2. After this court remanded the action for further proceedings, plaintiff was found disabled and awarded \$47,601.72 in past-due benefits. *See* ECF No. 21; ECF No. 26-1. Counsel now seeks attorney fees in the amount of \$11,900.00, which is equal to twenty-five percent of total past-due benefits that plaintiff was awarded, with a credit to plaintiff for the fees previously awarded under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), in the amount of \$6,500.00. ECF No. 26; *see also* ECF No. 25.

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<sup>1</sup> Although the motion for fees was filed under plaintiff's name, plaintiff's counsel is the real party in interest. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002).

1 An attorney is entitled to reasonable fees for successfully representing social security  
2 claimants in district court.

3 Whenever a court renders a judgment favorable to a claimant under  
4 this subchapter who was represented before the court by an  
5 attorney, the court may determine and allow as part of its judgment  
6 a reasonable fee for such representation, not in excess of 25 percent  
of the total of the past-due benefits to which the claimant is entitled  
by reason of such judgment.

7 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section 406(b)  
8 are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586 F.3d 1142,  
9 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802). The twenty-five percent  
10 statutory maximum fee is not an automatic entitlement; the court must ensure that the requested  
11 fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that § 406(b) does not displace  
12 contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review  
13 for reasonableness fees yielded by those agreements.”). In assessing whether a fee is reasonable,  
14 the court should consider “the character of the representation and the results the representative  
15 achieved.” *Id.* at 808. A “court may properly reduce the fee for substandard performance, delay,  
16 or benefits that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

17 The court finds that the requested fees are reasonable. Counsel’s billing records reflect a  
18 total of 30 hours of attorney time on this case. ECF No. 26 at 5-6; *see also* ECF No. 23 at 3-5.  
19 Counsel’s request for \$11,900.00, which is the equivalent of the statutory maximum, would  
20 constitute an hourly rate of approximately \$396.67 for attorney services. Counsel did not engage  
21 in dilatory conduct or perform in a substandard manner. Indeed, counsel’s representation resulted  
22 in this matter being remanded for further proceedings, which resulted in a favorable decision and  
23 an award of benefits. *See* ECF Nos. 13, 21. Given counsel’s experience, the result obtained in  
24 this case, and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable.  
25 *See, e.g., De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at  
26 effective hourly range of \$1,116.26); *Jamieson v. Astrue*, 2011 WL 587096 (E.D. Cal. Feb. 9,  
27 2011) (finding fees at effective hourly rate of \$1,169.49 reasonable); 2016 WL 4248557 (S.D.  
28 Cal. Aug. 11, 2016) (awarding fees at effective hourly rate of \$1,063); *Palos v. Colvin*, 2016 WL


1 5110243 (C.D. Cal. Sept. 20, 2016) ) (finding fees at effective hourly rate of \$1,546.39  
2 reasonable).

3 Accordingly, it is hereby ORDERED that:

- 4 1. The motion for attorney fees, ECF No. 26, is granted.
- 5 2. Plaintiff's counsel is awarded \$11,900.00 in fees pursuant to 42 U.S.C. § 406(b).
- 6 3. Plaintiff's counsel is directed to reimburse plaintiff the sum of \$6,500.00 for  
7 previously paid EAJA fees pursuant to 28 U.S.C. § 2412(d).

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9 IT IS SO ORDERED.

10 Dated: April 4, 2024

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12 JEREMY D. PETERSON  
13 UNITED STATES MAGISTRATE JUDGE  
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